HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.25143 of 2006

Dated:31.01.2007

Between:

T.D.Janardhan Rao.

...Petitioner.

and

The Registrar of Co-operative Societies, Hyderabad. and others.

...Respondents

HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.25143 of 2006

ORDER:

The petitioner functioned as President of the Krishna District Co-operative Central Bank, (for short "the Bank") for the term between 1995-2000. The District Collector, Krishna, the 2nd respondent herein, caused an enquiry under Section 51 of the Andhra Pradesh Co-operative Societies Act, 1964 (for short "the Act"), into the affairs of the bank during the said term. The 3rd respondent was appointed as an Enquiry Officer. He conducted a detailed enquiry and submitted a report, dated 25.05.2005, pointing out certain irregularities that were said to have taken place, when the petitioner functioned as President. At the instance of the 2nd respondent, the 4th respondent initiated proceedings under Section 60(1) of the Act. The notice issued by the 4th respondent is

challenged in the writ petition, on several grounds.

Sri K.R.Prabhakar, learned counsel for the petitioner, submits that the 4th respondent was not authorised by the 2nd respondent, as required under Section 60 of the Act, and in that view of the matter, the impugned proceedings are *ex facie* illegal. He contends that the 2nd respondent himself is a delegatee of powers of the Registrar, and therefore, he cannot further delegate his powers. Certain other contentions have also been urged.

Learned Government Pleader for Co-operation, on the other hand, submits that after receiving the report from the 3rd respondent under Section 51 of the Act, the 2nd respondent examined the matter in detail and thereafter, authorised the 4th respondent to initiate steps under Section 60 of the Act. He contends that the authorisation given to the

4th respondent is valid and legal, and no exception can be taken to the proceedings initiated by the 4th respondent. He further contends that having regard to the definition of the word 'Registrar' under Section 2(n) of the Act, it cannot be said that the 2nd respondent is a delegatee.

In relation to the functioning of the petitioner as President between 1995-2000 for the bank, the 2nd respondent caused an enquiry under Section 51 of the Act through the 3rd respondent. The report disclosed certain lapses and irregularities. For the purpose of taking consequential steps, the 2nd respondent entrusted the matter to the 4th respondent. The latter, in turn, issued the

impugned notice. The principal question urged on behalf of the petitioner is that the 2nd respondent himself is delegatee of the powers of Registrar and he cannot further delegate his powers. Another facet of his contention is that there was no authorisation as required under Section 60 of the Act, in favour of the 4th respondent.

The Registrar appointed under Section 3(1) of the Act is conferred with several powers to oversee the functioning of the societies. Inasmuch as the societies of different sizes are functioning in the State, a semblance of division of powers has been provided. Having regard to the sizes of the societies, officers and authorities of different ranks are conferred with the powers of Registrar and are called as Functional Registrars. Here again, it is to be noticed that the conferment of powers of Registrar on various authorities is not uniform. The word 'Registrar' as defined under Section 2(n) of the Act, reads as under:

> *"'Registrar' means the Registrar of Co-operative Societies appointed under Section 3(1) and includes any other person on whom all or any of the powers of the Registrar under this Act are conferred."*

It is not in dispute that the 2nd respondent is conferred with the powers of Registrar, on certain aspects *vis-à-vis* the Bank. It is also relevant to take note of the purport of Section 60 of the Act. This Section provides for consequential action in the form of surcharge proceedings, on the basis of the audit under Section 50, enquiry under Section 51 and inspection under Sections 52 or 53 of the

Act. An authority with the power to initiate these proceedings is the Registrar himself, or any person specially authorised by him.

It would have been possible for this Court to treat the 2nd respondent as delegatee of powers of the Registrar, had it been a case where the Act did not recognise, or provide for conferment of powers of Registrar upon him. A distinction between delegation of powers on the one hand and conferment of such powers on the other, is to be maintained. Delegation comes into play where the Act or the Rules made thereunder recognises an authority with clear powers, and provides for exercise of such powers by a subordinate authority under certain circumstances. The permission to exercise such powers must be accorded by the original authority on whom the powers are conferred. In other words, the delegation must flow from the recognised authority. Even where the powers are delegated, the exercise thereof continues to be in the name of the original authority and for all practical purposes, the delegatee acts as an agent.

Conferment of powers of a particular authority on a different officer_or authority, stands on a different footing. By conferring such powers on a different authority, the Act recognises such conferee on par with the named authority. Here, the former does not act as an agent of the latter, but exercises powers as of its own right. The principle that a delegatee cannot further delegate his powers, gets attracted where the principal, or subordinate legislation recognises only one authority and enables such authority to delegate his powers. In such a case, the delegatee cannot

further delegate his powers to another authority. In cases where the conferment of powers is not by way of delegation, the principle does not apply. Therefore, the contention of the petitioner cannot be accepted.

The word Registrar, mentioned in Section 60 of the Act, includes not only the one appointed under Section 3(1) of the Act, but also an officer or authority conferred with such powers, in accordance with the provisions of the Act and the Rules made thereunder. In that context, the 2nd respondent answers the description of Registrar. It is competent for him to initiate proceedings under Section 60 of the Act, or to authorise any other officer to do so. Further, the authorisation must be specific and clear, having regard to the consequences that flow from the proceedings. In the instant case, the 2nd respondent, who is conferred with the powers of Registrar, *vis-à-vis* the Bank, took note of the report submitted by the 3rd respondent, under Section 51 of the Act, and decided to entrust the action under Section 60 of the Act to the 4th respondent, through his proceedings, dated 07.01.2005. The proceedings run into 11 pages. The relevant portion through which he is said to have authorised the 4th respondent reads as under:

> *"Now therefore in exercise of powers vested under Section 51 of the Andhra Pradesh Cooperative Societies Act 7 of 1964 on the District Collector, Krishna, Machilipatnam is hereby issued findings on the Inquiry Report of the Krishna District Cooperative Central Bank Limited, Machilipatnam and (directed or forwarded) to Sri Divisional Cooperative Officer, Machilipatnam to initiate action under Section 60(1) of the A.P.C.S.Act 7 of 1964 against the persons*

responsible as noted in the Inquiry Report for recovery of Rs.76,06,513/- along with interest thereon as suggested by the Inquiry Officer."

A perusal of the same discloses that the word 'authorisation' does not figure anywhere in it. The paragraph comprises of only one sentence and it is not happily worded. One expects a better appreciation of the matter, from an officer holding the post of District Collector. It appears that the 2nd respondent did not bestow the required amount of attention to the matter or had depended upon his subordinates, on account of pressure of work. Be that as it may, when important rights of the petitioner are involved, strict compliance with the provisions of the Act is to be ensured.

On this short ground, the Writ petition is allowed. Impugned notice is set aside. It is left open to the 2nd respondent to pass orders specifically authorising the 4th respondent to initiate proceedings under Section 60 of the Act, on the basis of the report, dated 25.05.2005, submitted by the 3rd respondent. There shall be no order as to costs.

Dt.31.01.2007
L.NARASIMHA REDDY, J

GJ
Note:L.R.copy to be marked.